

SITE DEVELOPMENT PERMIT

FILE NO.	H20-021
LOCATION OF PROPERTY	South side of Post Street between Almaden Boulevard and South Almaden Avenue (50 South Almaden Boulevard)
ZONING DISTRICT	DC Downtown Primary Commercial
GENERAL PLAN DESIGNATION	Downtown
PROPOSED USE	Site Development Permit to allow construction of a new 20-story plus penthouse commercial office building, approximately 781,000 gross square feet in size, including 11,750 sf of ground-floor active use with four stories of underground parking and four stories of above-grade parking, and the removal of eight ordinance size trees and one non-ordinance size tree on an approximately 0.99-gross acre site.
ENVIRONMENTAL STATUS	Addendum to the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018, and addenda thereto
OWNER / APPLICANT ADDRESS	John P DiNapoli JP DiNapoli Companies Inc 99 Almaden Boulevard, Suite 565 San Jose, CA 95113

The Director of Planning, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** Site Development Permit to allow construction of a new 20-story plus penthouse commercial office building, approximately 781,000 gross square feet in size, including 11,750 sf of ground-floor active use with four stories of underground parking and four stories of above-grade parking, and the removal of eight ordinance size trees and one non-ordinance size tree on an approximately 0.99-gross acre site.
2. **Site Description and Surrounding Uses.** The subject site is currently a vacant surface parking lot. There is a multi-tenant commercial building to the north, the AT&T building to the south, a commercial park across Almaden Boulevard to the west, and the vacant Greyhound Bus building to the east.
3. **General Plan.** The subject site is designated **Downtown** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan, which has FAR standards of up to 30.0

(3 to 30 stories). The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Analysis: The project is for a commercial office with ground floor active use located within the Downtown area. The proposed 781,000 square feet of gross floor area equates to 18.1 FAR with the parcel size of 43,122 square feet. This is consistent with the General Plan designation.

The project is consistent with the following key General Plan policies:

Policy CD-6.6 – Promote iconic architecture and encourage and incorporate innovative, varied, and dynamic design features (e.g., appearance, function, sustainability aspects) into sites, buildings, art, streetscapes, landscapes, and signage to make Downtown visually exciting and to attract residents and visitors.

Analysis: The architectural design of this building is unique, innovative, and will bring visual interest to the Downtown skyline. The shape of the building also provides for interesting open space terraces and window shapes. Therefore, the project is consistent with this policy.

Policy IE-1.5 – Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within Downtown.

Analysis: This site is one block south of West Santa Clara Street, which provides transit services via bus routes 22, 64, 68, Express 168, and Rapid 500. The site is also three blocks west of the Santa Clara VTA Light Rail Station. Therefore, the project is consistent with this policy.

Policy LU-3.1 – Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.

Analysis: This project provides intensive employment use with ground floor active uses to maximize social interactions. Although the active uses have not yet been determined, uses such as retail and food services are anticipated. Therefore, the project is consistent with this policy.

Policy LU-3.5 – Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.

Analysis: The project provides 125 bicycle parking spaces and eight shower facilities for the use of employees within the building. The vehicular parking is situated underground and above the ground floor to provide active use and an attractive pedestrian entrance on the ground floor. The project also provides 19 street trees for a pleasant sidewalk experience. Therefore, the project is consistent with this policy.

4. **Zoning Regulations.** The project site is located within the **DC Downtown Primary Commercial** Zoning District. Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on

any site. The project site is also within the **Ground Floor Active Use Area Overlay (AUA)** per Section 20.70.520.A.2 of the Zoning Code. The AUA Overlay means that uses on the ground-floor, facing the street, should be active uses. The zoning district provides for a range of uses including residential, commercial, educational, entertainment, and medical uses.

- a. Use: Pursuant to Municipal Code Section 20.70.100, Office Use is an allowed use within the DC Zoning District.
- b. Height and Setbacks: Per Section 20.70.200 of the Zoning Code, properties located in the DC zoning district shall only be subject to the height limitations necessary for the safe operation of San José International Airport. Additionally, per Section 20.70.210 of the Zoning Code, the Downtown Primary Commercial District is not subject to setback regulations.

Analysis: The height and setbacks are consistent with the zoning district with a Permit Condition that the project receives a "Determination of No Hazard" from the FAA prior to Building Permit issuance.

- c. Parking: Commercial office use per Table 20-140 of the Zoning Code is required to provide parking at a rate of 2.5 spaces per 1,000 square feet. The project is proposing 585,000 gross square feet of office area. Per Section 20.70.320, all references to square footage shall be based on "floor area," which is defined in Section 20.90.050.D as 85% of the total floor area. Therefore, 2.5 spaces per 1,000 square feet would be applied to 85% of 585,000 sf. This calculates to 1,244 parking spaces required.

Per Sections 20.70.330.B and 20.90.220.A of the Zoning Code, the number of required parking spaces may be reduced by 50% with a Transportation Demand Management (TDM) Program, which would reduce the parking requirement to 622 spaces. A TDM was submitted and all management measures are included as permit conditions herein.

Analysis: The project is providing 749 parking spaces, which exceeds the minimum amount of 622 spaces required and calculates to approximately 60% of the required parking without the 50% TDM Plan reduction. The project is therefore consistent with the parking requirements.

- d. Bicycle Parking: Per Table 20-190 of the Zoning Code, office use requires 1 bicycle parking space per 4,000 square feet of floor area. This calculates to 125 bicycle spaces required (85% of 585,000 sf / 4,000 sf).

Analysis: The project is providing 125 bicycle spaces. This is consistent with the requirement.

- e. Off-street loading: Per Zoning Code section 20.70.420, the project is required to provide one off-street loading space plus one per each 100,000 square feet above 175,000 square feet for office use. This calculates to five off-street loading spaces required for the office use.

Additionally, per Zoning Code section 20.70.430.B, the project is required to provide one off-street loading spaces for the 11,750 sf of ground floor active use. Therefore, the project is required to provide six total off-street loading spaces.

Analysis: The project is providing seven loading spaces. This is consistent with the requirements.

- 5. **Downtown Design Guidelines.** The building is generally consistent with the Downtown Design Guidelines. Post Street is a Primary Addressing Street and Almaden Boulevard is a

Secondary Addressing Street per Section 2.2. The project design was evaluated for quality of architecture, massing, and materials, and has been determined to be consistent with applicable standards, with the following exceptions:

The project is requesting the following Exceptions to the Downtown Design Guidelines, as allowed under Section 1.4 of the Guidelines.

a. Section 4.4.6, Standard a – Occupied Space at Parking Garage Levels

Standard: If a parking garage façade is within 50 feet of a Primary Addressing Street, line the side(s) of the structure that face those street(s) with Occupied Space of at least the same height as the parking garage and of at least 20 feet depth.

Exception Request and Justification: Due to the size limitation of the narrow site and building footprint, parking and drive aisle clearances are extremely tight. Most of the floor space is distributed to the required core and ramp/circulation spaces for parking. With this limited site and building depth, providing at least 20' deep occupied space at parking levels along the Post Street frontage at upper parking levels is unrealistic.

- i. The intention of this Standard a is to increase street walkability through avoiding inactive frontage caused by parking structure. This issue is resolved by two approaches in our design:
- ii. Active ground floor use: building has a recessed ground floor intended for active uses, with an undulating frontage oriented towards the pedestrian flow from both directions.
- iii. Podium articulation: podium levels have an articulated and differentiated facade design that responds to the street scale and context, while maintaining their design consistency with other parts of the building.

Analysis: This Exception Request is recommended for approval due to site-specific constraints. The intention of this standard is to provide visual interest at the parking levels. However, this project is subject to the Ground Floor Active Use Area Overlay (AUA) per Section 20.70.520.A.2 of the Zoning Code, which prohibits parking use on the ground floor. Therefore, the pedestrian level will be active and vibrant for pedestrian use.

b. Section 5.3.2, Standard e – Active Use Space Depth

Standard: Design at least 50 percent of a building's Commercial Space along a Primary Addressing Street a minimum of 50 feet deep (60 feet preferred) behind the building façade.

Exception Request and Justification: To locate active use frontage all along the primary addressing street (Post street), we have placed the service and garage entry zones to the farthest south side of the site. Building core sizes are defined by elevator and life/safety requirements. This results in approx. 37' active use depth along Post street with over 51' depths possible at the ends beyond the core, for +/-95' or 38% of the 254' Post street frontage.

Analysis: This Exception Request is recommended for approval due to site-specific constraints, including the elevator and life/safety requirements. It can be found that the project meets the design standard to the extent physically feasible. The Active Use space is provided at 37 feet deep from Post Street, a Primary Addressing Street, for a portion of

the frontage. Per the Exception Request, the active use space is more than 50 feet deep for approximately 38% of the frontage.

6. **Environmental Review.** The environmental impacts of this project were addressed by the Downtown Strategy 2040 Final Program Environmental Impact Report adopted by City Council Resolution No. 78942 on December 18, 2018. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that, “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.”

Analysis: The project involves the construction of a new 20-story plus penthouse commercial office building, approximately 781,000 gross square feet in size, including 11,750 sf of ground-floor active use on an existing vacant surface parking lot within an urbanized area. The project would not have significant environmental effects as further evaluated in the Initial Study conducted for the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 18, 2018, and addenda thereto, as prepared for the project and the applicable mitigation measures, and permit conditions were made a part of this permit.

Additionally, the project conditions of approval include adhering to standard building and grading permit conditions as well as Conditions of Approval for air quality, biological resources, cultural resources, geology and soils, noise, and water quality during the construction phase.

7. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.
- a. The conditional use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and
- Analysis: As analyzed above, the proposed commercial office use is consistent with the Downtown General Plan Land Use Designation and General Plan Policies. The use is allowed within Downtown, the project is providing a FAR of 18.1, consistent with the development regulations.*
- b. The conditional use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
- Analysis: Commercial office uses are permitted within the DC Downtown Primary Commercial Zoning District. The project is required to have 622 vehicle parking spaces and 125 bicycle parking spaces. The project provides 749 vehicle parking spaces and 125 bicycle parking spaces to fulfill the parking requirements. The project also provides seven on-site loading spaces, which is consistent with the six loading spaces required, and active use frontage along Post Street, consistent with requirements of the Ground Floor Active Use Area Overlay (AUA). Therefore, the project conforms with the municipal code development standards.*
- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The on-site sign has been posted at the site since August 14, 2020 to inform the neighborhood of the project. A community meeting was held to discuss the project on Monday, September 14, 2020 via Zoom

Webinar. Approximately 9 members of the public were in attendance for the meeting. No comments were received. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The site is currently a vacant surface parking lot, and the project consists of a single building. Site improvements including parking and new landscaping are also proposed. Therefore, the project is harmonious and mutually compatible.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The project includes architecture design that is compatible with the surrounding neighborhood. As previously identified, the surrounding uses are primarily commercial. The building is twenty stories tall and is harmonious with the surrounding high-rise office buildings in the Downtown Core. The project design includes a modern contemporary architecture including aluminum and glass materials and variations on massing and pattern at the podium level, which contribute to an interesting and varied design. The building is therefore aesthetically harmonious with the neighborhood.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As described above, the project is to construct a new 20-story plus penthouse commercial office building, approximately 781,000 gross square feet in size, including 11,750 sf of ground-floor active use on an existing vacant surface parking lot. As further described in the Addendum and Initial Study, the project would not have significant CEQA impacts regarding noise, vibration, dust, drainage, erosion, stormwater runoff, and odor.

The development is located in Downtown and is adequately served by all required utilities and public services, and the project's Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. The project would also implement site design measures, such as creating new pervious areas, adding landscaping around sidewalks, and source control measures such as use of efficient irrigation systems, covered trash and recycling containers, and providing an interior parking area.

Construction activities would only result in temporary noise, vibration, and air quality impacts and the project would be subject to the City's Standard Permit Conditions in addition to Downtown Strategy 2040 standard measures and Mitigation Measures to reduce project impacts on the surrounding neighborhood. The project's operations would be primarily office and compatible with the surrounding Downtown uses in the area. No odors are associated with the operation of the office.

The project would be required to adhere to standard building and grading permit conditions as well as air and water quality measures during the construction phase, which would minimize related impacts during this project phase.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: Landscaping is provided along the perimeter sidewalk areas of the site, and utilities associated with the building are shielded from view. The site is currently a vacant surface parking lot. The trash enclosure is located inside the building and is shielded from the view from all adjacent public space.

- h. Traffic access, pedestrian access and parking are adequate, in that the project is subject to construction of public improvements and sidewalk access.

Analysis: The project meets the requirements for parking, curb cuts, and street access per the San Jose Municipal Code. The site can be accessed from South Almaden Boulevard and Almaden Avenue.

8. **Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

- a. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;

Analysis: As identified above, eight existing non-native, ordinance-size trees and one non-ordinance tree are proposed to be removed. The trees will need to be removed to construct the project. Based on this reason, and to accommodate the project, the trees proposed for removal cannot be preserved.

The trees proposed to be removed are required to be replaced at the City-required ratio below. The eight ordinance-size trees to be removed are of non-native or otherwise unsuitable species, including Southern Magnolia, California Fan Palm, and Elm. These eight trees are required to be replaced at a ratio of 4:1, calculating to 32 replacement trees.

The remaining non-ordinance tree is sized between 19 and 38 inches in circumference and is of the non-native species Southern Magnolia. This tree will be replaced at a ratio of 2:1, calculating to 2 replacement trees.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.				
A 38-inch tree equals 12.1 inches in diameter.				
A 24-inch box tree = two 15-gallon trees				

Based on these calculations, the project is required to plant 34 replacement trees at 15-gallon size or 17 replacement trees at 24-inch box size. Pursuant to the project landscaping plan, the development would pay the off-site tree replacement in-lieu fee for the equivalent of 34 replacement trees at 15-gallon size, prior to the issuance of Public Works grading permit(s), in accordance to the approved City Council Fee Schedule.

In accordance with the facts and findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Site Development Permit shall be deemed acceptance of all

conditions specified in this Permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "Almaden Boulevard Tower" dated October 12, 2020, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
7. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
8. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
11. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Lighting.** Outdoor lighting shall be consistent with the outdoor lighting policy or exception to the outdoor lighting policy.
13. **Performance Standards.** Any noise and vibration shall be consistent with the performance standards as identified in the City's zoning code.

14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
15. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
17. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
18. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
21. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
22. **Permit Adjustment Required.** This Permit shall not be effective unless prior to the issuance of any Building Permit, Permittee obtains a Permit Adjustment which addresses the following items to the satisfaction of the Director of Planning, Building and Code Enforcement: **Back-up Generator:** A back-up generator must meet the following:
 - a. Be enclosed within the building
 - b. Be consistent with the Municipal Code Section 20.80.2030:
 - c. Operation of a temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
 - d. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
23. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
24. **Downtown Financing Plans.** The San José City Council (“City”) approved the (i) Envision San Jose General Plan 2040 (“General Plan”) in 2011, (ii) Diridon Station Area Plan (“Diridon Plan”) in 2014, and (iii) Downtown Strategy 2040 (“Downtown Strategy”) in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San Jose.

The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof.

The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. The City Council has also directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

25. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans. Changes to the landscaping requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning
26. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
27. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
28. **Street Trees.** Street trees, as shown on Approved Plans, shall be planted on the street frontage, unless otherwise approved by the Public Works Department. A permit for planting street trees shall be obtained from the City Department of Transportation, Trees and Landscaping Section, (408) 794-1900.
29. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a

request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

30. **FAA Clearance Required.** Prior to the issuance of a Building Permit, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.
31. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, H20-021, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 - e. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
32. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code, or as amended and adopted by the City.
33. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:
<https://www.sanjoseca.gov/your-government/departments/public-works/development-services>
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement

includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

- b. **Transportation** (see separate Traffic memo dated 11/17/2020): With the inclusion of the following conditions, we conclude that the subject project will be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
- i. Install 25 feet of red curb on both sides of each of the project site driveways to provide adequate sight distance for exiting vehicles.
 - ii. Remove two on-street metered parking spaces as well as relocate the existing fire hydrant to provide adequate sight distance at the Almaden Boulevard project driveway.
 - iii. Construct the bikeway along its Almaden Boulevard frontage and continue the raised bikeway design southerly (approximately 115 feet) to San Fernando Street per the City's Better Bikeway program.
 - iv. Almaden Avenue/Post Street Intersection:
 - 1) Install all-way stop control
 - 2) Install crosswalks across all legs of the intersection
 - 3) Install bulb-out at the southwest corner of the intersection.
 - 4) Install striping for a crosswalk along the east leg of the Almaden Boulevard and Post Street intersection.
 - 5) Submit a TDM plan prior to Planning approval for the proposed 50% reduction in required off-street parking.
 - 6) Provide 30 feet of storage space between the entry gate and sidewalk at the access road entry on Almaden Avenue and Almaden Boulevard to provide space for one (1) SU-30 truck.
- c. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to:

foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

d. **Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).
- iii. If tie-backs are proposed for use along the adjacent property (APN 259-39-129), an agreement between the Applicant and the adjacent property owner will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
- ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:

<http://www.sanjoseca.gov/home/showdocument?id=27405>

f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

g. **Flood: Zone X.** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.

h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

i. **Undergrounding:**

- i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Post Street prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2020 base fee is \$515 per linear

- foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Post Street. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- j. **Assessments:** This project is located within the Premium Zone of the Downtown San Jose Property-Based Business Improvement District which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2020-2021, commercial properties pay \$0.130274193 and residential properties pay \$0.104996758 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the Country property tax bills listed under Tax Code 0916 "DOWNTOWN PBID." Any questions may be directed to Thomas Borden at (408) 535-6831.
- k. **Street Improvements:**
- i. Almaden Boulevard: Relocate curb line to provide a 26-foot sidewalk that includes a 14-foot frontage/through zone, 6-foot raised bike lane, and 6-foot furnishing zone with tree wells at the back of curb. Extend this configuration to the northeast corner of Almaden Boulevard/San Fernando Street.
 - ii. Post Street and Almaden Avenue: Reconstruct street section including curb, gutter and 12-foot sidewalk with tree-wells at back of curb.
 - iii. Almaden Avenue/Post Street Intersection:
 - 1) Install all-way stop control
 - 2) Install crosswalks across all legs of the intersection
 - 3) Install bulb-out at the southwest corner of the intersection.
 - iv. Almaden Boulevard/Post Street Intersection: Install a crosswalk and handicap ramps, (2) at opposite returns, across Post Street at the east leg of the intersection.
 - v. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - vi. Close unused driveway cuts.
 - vii. Proposed driveways to be 26-feet wide.
 - viii. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - ix. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.

- x. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- l. **Downtown Construction:** This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
 - 2) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
 - ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii above.
 - 3) If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- n. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.

o. Electrical:

- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.

p. Street Trees:

- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - 1) Almaden Boulevard frontage: Replace existing street trees with Quercus shumardii planted 35' on center at the back of curb.
 - 2) Post Street frontage: Provide Acer x freemanii 'Armstrong' planted 15' on center at the back of curb.
 - 3) Almaden Avenue frontage: Provide Ginkgo biloba 'Autumn Gold' planted 35' on center at the back of curb.
- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

34. Downtown Strategy 2040 FEIR Standard Measures

a. Geology and Soils

- i. If dewatering is needed, the design-level geotechnical investigation to be prepared for the project shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

b. Hazards and Hazardous Materials

- i. Prior to the issuance of a development permit for any project structures that would exceed the FAA imaginary surface applicable to the project site, the following actions shall be accomplished (2040 General Plan Policies TR-14.2 and CD-5.8):
 - 1) The applicant shall comply with the notification requirements of Federal Aviation Regulations, Part 77, and receive a "Determination of No Hazard" from the FAA.
 - 2) Conditions set forth in the required FAA determination of No Hazard regarding roof-top lighting or marking shall be incorporated into the final design of the structure.

- 3) Avigation and/or “no build” easements shall be dedicated to the City of San José as a condition of approval (GP Policy TR-14.4).
 - ii. The applicant shall comply with safety and noise policies identified in the CLUP for the Norman Y. Mineta San José International Airport (GP Policy TR-14.3).
 - iii. The applicant shall design all new exterior lighting within the AIA in a manner that avoids interference with aircraft operations. Such lighting shall be constructed and located so that only the intended area is illuminated, and off-site glare is fully controlled. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots (CLUP Policy G-7).
- c. **Hydrology and Water Quality.**
- i. New development will be required to design and construct on-site storm drain systems meeting the City’s 10-year storm event design standard (GP Policies IN-3.1 and IN-3.7). Applicants shall prepare drainage plans that define needed improvements in accordance with City standards and MRP requirements (GP Policies IN-3.9 and IN-3.10).
 - ii. In accordance with GP Policy IN-3.3, at the time future projects are proposed, the City will evaluate the local storm drain system to determine if runoff from the site would contribute to significant downstream deficiencies and identify the need for specific upgrades (i.e., new or supplemental stormwater lines, catch basins, outfalls, or other infrastructure). If needed, modifications to the storm drain system could be completed either independently, jointly with other developments in the area, or as part of the City’s CIP process. The City may also consider financing improvements to the storm drain system in the Downtown Strategy 2040 area through the payment of special taxes or connection fees by development (GP Policy IP-15.2).
 - iii. Future projects will be required to implement and maintain BMPs that facilitate the infiltration of water into the ground surface, reduce the rate and volume of runoff to the storm drain system, and minimize pollution in runoff, in accordance with the MRP and City policies.
 - iv. Consistent with the Clean Water Act and RWQCB Basin Plan, projects will be required to implement and maintain BMPs for minimizing the amount of trash and mercury-containing products entering waterways in the area. Example control measures include catch basin inserts, hydrodynamic separators, and outfall netting devices. Institutional measures that may be implemented include enhanced street sweeping, storm drain signage/markings, education and outreach, trash bin management, and anti-littering enforcement. Additional measures are identified in the SCVURPPP’s *Trash BMP Toolbox* (September 2007).

35. Standard Permit Conditions

- a. **Air Quality.** The project applicant shall implement the following measures during all phases of construction to control dust and exhaust at the project site.
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.

- ii. Cover trucks transporting soil, sand, or other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - iii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Replant vegetation in disturbed areas as quickly as possible.
 - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
 - x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications.
 - xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
- b. **Transportation.** The following Transportation Demand Management (TDM) measures will be implemented by the building owner and coordinated with future tenants occupying the project development. Implementation, monitoring and reporting shall be per the of the Transportation Demand Management (TDM) Plan prepared by Hexagon Transportation Consultants dated July 15, 2020:
- i. Carpool/Vanpool Ride Matching
 - ii. Transit Use Incentive Program
 - iii. Preferential Parking for Carpools/Electric Vehicles
 - iv. Telecommuting and Flexible Work Schedule
 - v. On-Site TDM Coordinator
 - vi. On-Site Support Services
 - vii. On-Site Showers and Lockers
- c. **Biological Resources. Tree Replacement.** The removed trees on-site would be replaced according to tree replacement ratios required by the City, as provided in in the Tree Removal Findings above, as amended.

- i. Since all nine (9) trees onsite would be removed, eight (8) trees would be replaced at a 4:1 ratio and the remaining one (1) tree would be replaced at a 2:1 ratio. As mentioned previously, there are no native trees on-site. The total number of replacement trees required to be planted would be 34 trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- ii. The species and exact number of replacement trees to be planted on a given project site would be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. The planting and maintenance of replacement and street trees will be made conditions of development approval.
- iii. **Payment of Fees.** In the event the project site does not have sufficient area to accommodate the required tree mitigation, implement one or more of the following measures, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
 - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- d. **Santa Clara Valley Habitat Plan (SCVHP).** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning or Director's designee of the City of San José Department of PBCE for review and shall complete subsequent forms, reports, and/or studies as needed prior to the issuance of grading permits. The SCVHP and supporting materials can be viewed at www.scv-habitatplan.org.
- e. **Cultural Resources**
 - i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
 - ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through

5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- a) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- b) The MLD identified fails to make a recommendation; or
- c) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

iii. **Paleontological Resources.** If vertebrae fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The City will be responsible for ensuring that the project sponsor implements the recommendations of the paleontological monitor regarding treatment and reporting. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

f. **Geology and Soils.**

- i. To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on-site and off-site to the extent feasible and in compliance with the Building Code.
- ii. Schedule all excavation and grading work in dry weather months or weatherize construction sites.
- iii. Cover stockpiles and excavated soils with secured tarps or plastic sheeting.

- iv. Install ditches to divert runoff around excavations and graded areas if necessary.
- v. Construct the project in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the San José Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

g. Hydrology and Water Quality

i. Construction-related water quality.

- 1) Install burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Suspend earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) Water all exposed or disturbed soil surfaces at least twice daily to control dust, as necessary.
- 4) Water or cover stockpiles of soil or other materials that can be blown by the wind.
- 5) Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
- 6) Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
- 7) Replant vegetation in disturbed areas as quickly as possible.
- 8) Fill with rock all unpaved entrances to the site to remove mud from truck tires prior to entering City streets. Install a tire wash system if requested by the City.

- ii. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

36. Conformance to MMRP. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.

a. Air Quality.

- i. **MM AIR-1.1:** Prior to issuance of any demolition, grading, and/or building permits (whichever occurs earliest), the project applicant shall implement the following control measures to achieve an 85 percent reduction in TAC and PM_{2.5} emissions:
 - 1) All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 4 engines.
 - 2) Where Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall use equipment that meet U.S. EPA emissions standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that achieve a fleetwide 85 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.

- 3) Install electric line power during early construction phases to avoid use of diesel generators, compressors, and welders.
 - 4) Stationary construction cranes (building cranes) shall be powered by electricity.
 - 5) The project applicant shall submit a construction operations plan prepared by the construction contractor that outlines how the contractor will achieve a fleet-wide average 85 percent reduction in DPM exhaust emissions or greater. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval.
- ii. **MM AIR-2.1:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest), the project applicant shall submit verification from a qualified Air Quality Consultant to the Director of Planning, Building and Code Enforcement or the Director's designee that the following exhaust control measures are to be implemented:
- 1) Install diesel particulate matter filters for the emergency diesel generator that reduce Diesel Particulate Matter by 85 percent.
- b. **Biological Resources**
- i. **MM BIO-1.1.**
- 1) **Avoidance:** Prior to the issuance of any tree removal, grading, demolition, and/or building permits, tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.
 - 2) **Nesting Bird Surveys:** If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
 - 3) **Buffer Zone:** If an active nest is found in an area that will be disturbed by construction, the ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction. The buffer zone shall remain in place until the qualified ornithologist determines the nest is no longer active or the nesting season ends. If construction ceases for 14 days or more during the early part of the breeding season (February 1st through April 30th, inclusive) or for 30 days or more during the late part of the breeding season (May 1st through August 31st, inclusive), then resumes again during the breeding season, an additional survey shall be necessary

to avoid impacts to active bird nests that may have been established during the pause in construction.

- 4) **Reporting:** Prior to any tree removal, or approval of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement or Director's designee.

c. **Cultural Resources**

i. **MM CUL-1.1.**

- 1) **Preliminary Investigation.** Prior to the issuance of any grading or building permits, a qualified archaeologist who is trained in both local prehistoric and historical archaeology shall complete a subsurface exploration of the project site commensurate with proposed disturbances to sample the historically sensitive areas and sample the deeper native soils that could contain the remains of Native American resources. The exploration work shall be conducted by a qualified archaeologist after the demolition of the building and removal of the asphalt on the parking lot. To explore for potential Native American resources, deeper trenches shall be placed beyond the areas considered sensitive for historic-era resources and dug to a depth commensurate with proposed impacts, or until the soils and sediments are determined to be reliably culturally sterile. Archaeological monitoring may be necessary to examine deeper impacts. If any ground-disturbing activities are required for other environmental concerns or for potholing to identify previous utilities, utility removal, or any grading prior to subsurface archaeological explorations, an archaeological monitor shall be required.
- 2) The investigation program, including an archaeological monitoring plan, if necessary, shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of a grading permit.

ii. **MM CUL-1.2.**

- 1) **Treatment Plan.** Prior to the issuance of any grading or building permits, the project applicant shall prepare a treatment plan based on the findings of the subsurface exploration set forth in MM CUL-1.1. The treatment plan shall reflect permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to approval of any grading permit. The treatment plan shall contain, at a minimum:
 - a) Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
 - b) Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
 - c) Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).

- d) Detailed field strategy to record, recover, or avoid the finds and address research goals.
 - e) Analytical methods.
 - f) Report structure and outline of document contents.
 - g) Disposition of the artifacts.
 - h) Appendices: all site records, correspondence, and consultation with Native Americans, etc.
- 2) Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading or building permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.
- iii. **MM CUL-1.3: Evaluation and Documentation.** During all ground disturbance or construction related activities, the project applicant shall notify the Director of Planning, Building and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during grading or other construction activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Informative Center (NWIC), and/or equivalent.
- iv. **MM CUL-1.4: Technical Reporting.** Once all analyses and studies required by the treatment plan have been completed, a technical report summarizing the results of the field investigation and data recovery shall be prepared. The report shall document the results of field and laboratory investigations and shall meet the Secretary of the Interior's Standards for Archaeological Documentation. The contents of the report shall be consistent with the protocol included in the treatment plan. The report shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of building permits. Once approved by the City, the final documentation shall be submitted to the Northwest Information Center (NWIC).
- v. **MM CUL-1.5: Maintain Confidentiality.** As required under Public Resources Code (PRC) Section 21084.3, the project applicant shall protect the confidentiality of any resources discovered on-site. The treatment plan and all pertinent data and results shall not be available for public review or distribution. The site of any reburial of Native American human remains shall be kept confidential and not be disclosed pursuant to the California Public Records Act, California Government Code Section 6254.10, 6254(r). The County Medical Examiner shall also withhold public disclosure of information related to such reburials pursuant to the exemptions set forth in California Government Code Section 6254(e).

d. Hazards and Hazardous Materials

i. MM HAZ-1.1.

- 1) Due to the presence of residual contaminants on-site exceeding regulatory environmental screening levels for public health and the environment, the project applicant shall implement appropriate management procedures, including removal of the contaminated soil and implementation of a Soil and Groundwater Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document under regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH). Copies of all environmental investigations and evidence of SCCDEH oversight shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department prior to the issuance of any demolition, grading and/or building permits. The SMP shall be prepared by a qualified hazardous materials consultant and include the following:
 - a) Management practices for handling contaminated soil, groundwater, or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site. Soils likely requiring Class I disposal consist of the on-site fills. Soils likely requiring Class II landfill disposal include native soils impacted with reported fuel releases (in the western area of the site) and soils within the groundwater yielding zone (approximate depth of 17 to 33 feet) in the western half of the site. The native soils in the eastern portion of the site likely can be handled through disposal at a permitted (non-landfill) facility.
 - b) Preliminary Remediation Goals (PRGs) for environmental contaminants of concern to evaluate the site conditions following SMP implementation.
 - c) A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.
- 2) The site is currently identified as an open leaking underground storage tank (LUST) under regulatory oversight from the SCCDEH. The proposed redevelopment of the site requires coordination with SCCDEH and the responsible party (AT&T). The SMP shall be prepared and submitted to SCCDEH for review and approval prior to issuance of grading permits and commencement of cleanup activities.
- 3) The approved SMP or No Further Action letter (or equivalent assurance) from SCCDEH documenting completion of cleanup activities shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading permits.

- ii. **MM HAZ-2.1:** In accordance with Bay Area Air Quality Management District (BAAQMD) requirements for project sites with greater than 0.25 percent asbestos, an appropriately qualified environmental professional shall prepare an Asbestos Dust Mitigation Plan (ADMP) prior to the issuance of any demolition, grading, and/or

building permits. The ADMP shall provide the necessary mitigation measures, procedures, and protocols to minimize exposure of human receptors (both on-site and off-site) to Naturally-Occurring Asbestos (NOA) during site redevelopment. The risk posed by the disturbance of NOA containing materials during planned redevelopment activities can be reduced and/or minimized by dust mitigation measures that address specific emission sources, such as track-out onto paved public roads, active storage piles, inactive disturbed surface areas and storage piles, traffic on unpaved on-site roads, earthmoving activities, and off-site transport of materials. Prior to the issuance of any demolition, grading, and/or building permits, the final ADMP shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.

e. Noise and Vibration

i. MM NOI-1.1.

- 1) Prior to the issuance of any demolition, grading and/or building permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits.
- 2) As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but are not limited to, the following best management practices (as modified from the City's standard permit conditions:
 - a) Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
 - b) Construct solid plywood fences around ground-level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - c) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - d) Unnecessary idling of internal combustion engines shall be strictly prohibited.
 - e) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - f) Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- g) Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.
- h) Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
- i) Control noise from construction workers' radios to a point where they are not audible at existing residences nearby.
- j) The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- k) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- l) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction site.
- m) Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem.
Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

37. Revocation, Suspension, Modification. This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **9th** day of **December, 2020**.

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy